

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WESTCHESTER FIRE INSURANCE
COMPANY, as subrogee of JURYS DOYLE
HOTEL GROUP USA, LTD. d/b/a
JURYS DOYLE HOTEL, LLC

Plaintiff,

v.

No. 05-cv-11375-MLW

DJ PLUMBING & HEATING, INC.,

Defendant.

**DEFENDANT’S INITIAL DISCLOSURES PURSUANT TO LOCAL RULE 26.2(A)
AND RULE 26(a)(1) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Defendant DJ Plumbing & Heating, Inc. (“DJ Plumbing”) hereby discloses the following information to Plaintiff Westchester Fire Insurance Company (“Westchester Fire”) pursuant to Fed. R. Civ. P. 26(a)(1) and Local Rule 26.2(A). In view of the early stage of this litigation, DJ Plumbing reserves the right to amend or supplement this statement based on information obtained through further investigation and discovery.

Furthermore, these disclosures are being made without waiver of, or prejudice to, DJ Plumbing’s right to have this Court rule, upon appropriate motion, or certify to the Massachusetts Supreme Judicial Court, on the question of whether Westchester’s subrogation claim herein is barred as a matter of Massachusetts law by the waiver of subrogation provisions contained or referenced in the applicable construction contracts and insurance policy referenced below. DJ Plumbing anticipates that this issue will be presented to this Court for decision or certification as a preliminary matter by means of a motion for judgment on the pleadings or alternatively, a motion for summary judgment, before any fact or expert discovery commences

relating to the extent and cause of any property damage for which Westchester seeks to recover in subrogation.

A. Persons Likely To Have Discoverable Information.

1. Employees of DJ Plumbing.

Name:	Likely to have discoverable information regarding:
David Johanson (President of DJ Plumbing)	Contracts entered into, and the scope of work performed by, DJ Plumbing in connection with the renovation and/or repair of the Jurys Doyle Hotel; contracts entered into and work performed by other contractors and entities in connection with the renovation and/or repair of the Jurys Doyle hotel as may relate to damages alleged by Westchester; the extent of any property damage at the Jurys Doyle Hotel and the causes thereof which may relate to damages alleged by Westchester.

2. Other Individuals/Entities.

Name:	Likely to have discoverable information regarding:
Various Not Yet Identified Employees of <u>Westchester Fire Insurance Company</u>	The extent of any property damage at the Jurys Doyle Hotel and the causes thereof as may relate to damages alleged by Westchester; the builders' risk insurance policy issued by Westchester.
Various Not Yet Identified Employees of <u>Jurys Doyle Hotel</u> , Boston, Massachusetts	Contracts entered into by Jurys Doyle Hotel regarding the renovation and/or repair work at the hotel which may relate to damages alleged by Westchester; the scope of work performed by DJ Plumbing, Suffolk Construction Company and other contractors and entities in connection with the renovation and/or repairs of the Jurys

	Doyle Hotel as may relate to damages alleged by Westchester; the extent of any property damage at the Jurys Doyle Hotel and the causes thereof as may relate to damages alleged by Westchester; the builders' risk insurance policy issued by Westchester.
Various Employees of <u>Suffolk Construction Co.</u> , including but not limited to Karen Walsh, Walter McDonough, Mark DiNapoli, and Frank Geary.	Contracts entered into by Jurys Doyle Hotel and Suffolk Construction Company regarding the renovation and/or repair work at the hotel which may relate to damages alleged by Westchester; the scope of work performed by DJ Plumbing, Suffolk Construction Company and other contractors and entities in connection with the renovation and/or repairs of the Jurys Doyle Hotel which may relate to damages alleged by Westchester; the extent of any property damage at the Jurys Doyle Hotel and the causes thereof as may relate to damages alleged by Westchester.
Various Not Yet Identified <u>Employees of Contractors</u> Who Performed Work In Connection with the Renovation and/or Repairs of the Jurys Doyle Hotel	Contracts entered into by contractors who performed work in connection with the renovation and/or repair of the Jurys Doyle Hotel which may relate to damages alleged by Westchester; the scope of work performed by those contractors DJ Plumbing, Suffolk Construction in connection with the renovation and/or repair of the Jurys Doyle Hotel which may relate to damages alleged by Westchester; the extent of any property damage at the Jurys Doyle Hotel and the causes thereof as may relate to damages alleged by Westchester.

B. Relevant Documents and Tangible Things In DJ Plumbing's Possession, Custody, Or Control.

1. Documents constituting and relating to Policy No. I20517694, issued by Westchester Fire to Jurys Doyle Hotel LLC and Suffolk Construction Company, with a policy period of 10/11/2002 through 4/11/2004 (the "Builders Risk" policy).

2. Documents constituting and relating to the "Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum," (AIA Document A101-1997), entered into between Jurys Doyle U.S. Holdings, Inc. and Suffolk Construction Co., Inc. on June 15, 2002, and the "General Conditions of the Contract for Construction," (AIA Document A201-1997) for Jury's Boston – The Headquarters Hotel.

3. Documents constituting and relating to the "Suffolk Construction Company, Inc. Subcontract," entered into between DJ Plumbing and Suffolk Construction Company, Inc. on January 16, 2003.

4. Piping and related material removed by DJ Plumbing from the basement of the Jurys Hotel after the flooding which is alleged to have resulted in property damage at the hotel and or which Westchester seeks damages in subrogation against DJ Plumbing in this action.

C. Computation Of Damages Claimed By DJ Plumbing.

DJ Plumbing seeks in its Prayer for Relief certain attorneys' fees, costs, and all other expenses incurred in defending or otherwise litigating this action. These fees, costs and expenses are not readily ascertainable at this time, as they are continuing to accrue as the litigation progresses. If DJ Plumbing succeeds in its defense and the court enters an award to DJ Plumbing for its attorneys' fees, costs and other related expenses, DJ Plumbing will calculate and present those costs to Westchester Fire.

D. Insurance Agreement.

DJ Plumbing is insured under Policy No. QBR823019, issued by OneBeacon Insurance Company for the policy period July 9, 2003 to July 9, 2004, which may be available to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. This policy will be available for inspection and copying pursuant to Fed. R. Civ. P. 34.

Respectfully submitted,

DJ PLUMBING & HEATING, INC.,

By its attorneys,

/s/ Kurt M. Mullen

John Stadler, BBO No. 548485

jstadler@nixonpeabody.com

Kurt M. Mullen BBO No. 651954

kmullen@nixonpeabody.com

NIXON PEABODY LLP

100 Summer Street

Boston, MA 02110-2131

(617) 345-1000

Dated: March 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 27, 2006.

/s/ Kurt M. Mullen

Kurt M. Mullen